UNL 2999.01 801204-0011

Art Unit 1645

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of Raul G. Barletta and N. Beth Harris Serial No. 09/759,287 Filed January 11, 2001 Confirmation No. 9782 For IDENTIFICATION OF VIRULENCE DETERMINANTS Examiner Rodney P. Swartz

April 26, 2007

REQUEST FOR REFUND

TO THE DIRECTOR OF THE U.S. PATENT AND TRADEMARK OFFICE, SIR:

Applicants' previous representative, Senniger Powers, requests a refund of the fees charged to Deposit Account No. 19-1345 in the amount of \$465.00

In support of this Request, Senniger Powers states that the \$465 fee was inadvertently charged to Deposit Account No. 19-1345 on February 21, 2007 in relation to the above-noted application. Specifically, on January 31, 2007, applicant's current representative, Stinson Morrison Hecker, LLP, mailed a Notice of Appeal, along with a check in the amount of \$250, and further authorized the Director to charge Deposit Account No. 19-4409 for any additional fees. This Notice of Appeal was filed prior to the three-month date after the mailing of a final Office action and, as such, no extension of time fee was required. Senniger Powers, however, was charged \$465 on February 21, 2007 in relation to the above-referenced case. Senniger Powers submits the fee invoice for Deposit Account No. 19-1345 showing the \$465 charge (Exhibit A). Furthermore, Senniger Powers submits the Notice of Appeal and Pre-Appeal Brief Request for Review filed by Stinson Morrison Hecker, LLP, as downloaded from PAIR (Exhibit B).

Furthermore, even if an extension fee or other fee was required in the above-noted case, Senniger Powers asserts that the fee should not have been withdrawn from Deposit Account No. 19-1345. Specifically, a Notice Regarding Change of Power of Attorney was mailed to Senniger

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Powers, thereby revoking the Power of Attorney given by Applicants to Senniger Powers in the above-noted case, on December 2, 2004. Senniger Powers submits the Notice Regarding Change of Power of Attorney received from the USPTO as Exhibit C. Furthermore, according to PAIR, the current Power of Attorney for the above-noted application is Stinson Morrison Hecker, LLP. Senniger Powers submits the PAIR webpage indicating Attorney/Agent Correspondence Information for the above-noted case as Exhibit D. As such, any fees in relation to the above-noted case should be charged to Applicant's current representative, Stinson Morrison Hecker, LLP, through Deposit Account No. 19-4409.

Based on the foregoing, Senniger Power respectfully requests a refund of the fees in the amount of \$465.00. The requested refund may be made directly to Deposit Account No. 19-1345.

Respectfully Submitted,

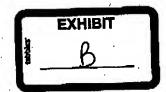
/Christopher M. Goff/

Christopher M. Goff, Reg. No. 41,785 SENNIGER POWERS One Metropolitan Square, 16th Floor St. Louis, Missouri 63102 314-231-5400

CMG/JMB/dhm Via facsimile (571) 273-6500

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		/			9204	-\$100.00	\$51,624.67
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FAX NO. 3142314342



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Serial No.: 09/777.492 Docket No.: 257/103



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s)

Raul G. Barletta, N. Beth Harris.

Serial No.

09/759,287 UNL 2999, 1 January 11, 2001

Filing Date

Title

Identification of Virulence Determinants

Group/Art Unit

Examiner

Rodney P. Swartz

Confirmation No.

Docket No.

UNL 2999.1 (801204-00)1)

Mail Stop AF

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

NOTICE OF APPEAL

Pursuant to 37 C.F.R. § 41.31, Applicant hereby appeals to the Board of Patent Appeals and Interferences from the decision of the examiner in a final Office Action, dated August 1, 2006, finally rejecting claims 15-42 and 54 of the application. Enclosed is a check in the amount of \$250 as payment of the notice of appeal fee.

Submitted concurrently with this Notice of Appeal is a Pre-Appeal Brief Request

for Review.

Acknowledgement of receipt is respectfully requested.

Respectfully submitted,

02/06/2007 LHONDINI 00000026 09/59287

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Nancy T. Morris, Reg. No. 42,01

STINSON MORRISON HECKER LLP

1201 Walnut, Suite 2900

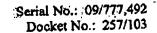
Kansas City, MO 64106-2150 Telephone: (816) 842-8600

Facsimile: (816) 691-3262

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The Director is hearthy authorized to charge additional amount required, or overpayment, to Deposit Account No. 19APR-26-2007 THU 04:03 PM SENNIGER POWERS





THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s)

Raul G. Barletta, N. Beth Harris.

Serial No.

09/759,287

Filing Date

January 11, 2001

Title

Identification of Virulence Determinants

Group/Art Unit

: 1645

Examiner

Rodney P. Swartz

Confirmation No.

9782

Docket No.

UNL 2999.1 (801204-0011)

Mail Stop AF Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Applicant Requests review of the final rejection made in the Office Action of

August 1, 2006 in the above-identified application.

- No amendments are being filed with this request.
- This request is being filed concurrently with a Notice of Appeal.
- The review is requested for the reasons stated in the "Remarks" section on the attached sheets.

Certificate of Mailing Under 37 C.F.R. 1.8

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to Mail Stop AF. Commissioner for Patents, P.O. Box 1450, Artington, VA 22313-1450, on:

Date: 31, 200

The Director is hereby authorized to charge any additional amount required, or credit any overpayment, to Deposit Account No. 19-4409.

Serial No.: 09/777,492 Docket No.: 257/103

REMARKS

In response to the Office Action dated August 1, 2006, the Examiner Interview conducted on December 12, 2006, and in conjunction with the Notice of Appeal submitted herewith, Applicant requests review of the final rejection of claims 15-42 and 54 of the above-identified application for the following reasons:

In the Office Action, under the heading "Rejections Maintained", the Examiner maintains the rejection of all claims under 35 U.S. C. § 112, second paragraph, as indefinite for differentiation of "growing" from "nongrowing". Specifically, the examiner then states that "it remains unclear how one distinguishes between the wanted and non wanted bacteria if the antimicrobial has 'reduced affect' on non-growing bacteria without some iteration of what constitutes 'reduced' affect. This reduction may be 0.1% or 100%, e.g., if the 'reduced' affect is only 0.1%, i.e., this means it results in the killing of 99.9% of non-growing bacteria. Thus, it is unclear what level of 'reduced' affect is acceptable for the instant invention."

Applicant has submitted arguments in response to the examiner's rejection, e.g., see Applicant's Amendment After Final at page 7 (mailroom date 11-7-06) in explanation of why any level of "reduced" affect is acceptable for the instant invention. Notably, in a telephonic interview with the examiner held on December 12, 2006, Applicant reiterated the arguments presented in the referenced Amendment After Final and further argued that one skilled in the art would know to use a synchronous culture of mutated bacteria if s/he wanted to effect the number of non-growing but viable bacteria.

Serial No.: 09/777,492 Docket No.: 257/103

In summary, the phrase "reduced affect on" in independent claims 15, 28, 29, and 42 (and thus dependent claims 16-27, 30-41, and 54) is not indefinite. As such, the method differentiates "growing" from "nongrowing" and the examiner's rejection should be withdrawn.

In view of the foregoing remarks, it is respectfully submitted that the claims of the present application are in condition for allowance and eventual issuance. Such action is respectfully requested.

Should this Review Board have any further questions or comments that need be addressed in order to obtain allowance, it is invited to contact the undersigned attorney at the number listed below.

Acknowledgement of receipt is respectfully requested.

Respectfully submitted,

Marcen 1 M

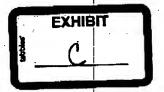
STINSON MORRISON HECKER LLP

1201 Walnut Street, Suite 2900

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Page 1 of 1

09/759,287 Iden	tification of virulence determi	nants	03-07- 2007::16:02:26	
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Application Number:	•	Customer Number:	• .	
Filing or 371 (c) Date:	01-11-2001	Status:	Notice of Appeal Filed	
Application Type:	Utility	Status Date:	03-07-2007	
Examiner Name:	SWARTZ, RODNEY P	Location:	ELECTRONIC	
Group Art Unit:	1645	Location Date:	•	
Confirmation Number:	9782	Earliest Publication No:	US 2002-0064861 A1	
	, UNE 2999.01	Earliest Publication Date:	05-30-2002	
Class / Subclass:	435/006	Patent Number:		
First Named Inventor:	Raul Barletta , Lincoln, NE	Issue Date of Patent:		
Title of Invention: Identification of virulence determinants				



Page 1 of 1



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09/759,287

01/11/2001

Raul G. Barletta

UNL 2999.01

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Date Mailed: 12/02/2004

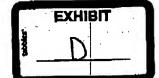
NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 03/22/2004.

 The Power of Attorney to you in this application has been revoked by the assignee who has intervened as provided by 37 CFR 3.71, Future correspondence will be mailed to the new address of record(37 CFR 1.33).

EAON SMALLWOOD 1600 (571) 272-0551

OFFICE COPY



Correspondence Address

Page 1 of I

09/759,28	7 Identification of vi	rulence determinants	03-07- 2007::15:46:32
Attorney	//Agent Correspond	ence Information	
Corresp	ondence Address		
Name: Address:		STINSON MORRISON HECKER LLP	,
		ATTN: PATENT GROUP 1201 WALNUT STREET, SUITE 2800 KANSAS CITY MO 64106-2150	
Attorne	y/Agent Information		
	Name	Phone	
	Bell, Susan	816-842-8600	
* * * * * * * * * * * * * * * * * * * *	Carison, Judith	. 816 <mark>-842-8600</mark>	
	Elsea, Kelly	316-265-8800	•
	Knedlik, Lana	816-691-3248	
	Marsh, James Jr	816-842-8600	
	Morris, Nancy	402-930-1759	
	Sellers, Andrea	816-842-8600	,
34017	Slicer, Penny	816-691-3438	
25717	Wharton, J	816-842-8600	
237 17 48870	Yougo, Mark	816-842-8600	

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16TH FLOOR
ST. LOUIS, MISSOURI 63102
TELEPHONE (314) 231-5400
FACSIMILE (314) 231-4342

FACSIMILE TRANSMITTAL COVER SHEET

Date:	April 26, 2007	FILE#:		NL 2999.01 01204-0011	SENT BY:	Christopher M. Goff
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NAME:	Daphne Moore				<u> </u>	
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